

# **CDCR Valdivia Monitoring Report**

## **California Institution for Women**

### **2009-1st Quarter**



# **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**



## **VALDIVIA MONITORING TOUR California Institution for Women**



**Final Report to Task Force**

**Submitted by the**

**OFFICE OF COURT COMPLIANCE**

**March 12, 2009**

# VALDIVIA/ARMSTRONG TOUR REPORT

California Institution for Women

1<sup>st</sup> Quarter 2009

February 3 – 4, 2009

## 1. SUMMARY OF TOUR

### A) Purpose of the Tour

The Office of Court Compliance (OCC) observed parole revocation proceedings at the California Institution for Women (CIW), and met with California Department of Corrections and Rehabilitation (CDCR) and California Parolee Advocacy Program (CalPAP) staff. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedure pertaining to parole revocation.

### B) Administration of the Tour

The monitoring group observed the following processes:

#### Revocation:

- 5 Notice of Rights/Charges.
- 6 Probable Cause Hearings.

The monitoring group also reviewed the following documents/revocation packets:

- 75 revocation packets, **See Exhibit 1-A, Tour Summary Spreadsheet**

### C) Proposed Corrective Action Plan:

The Office of Court Compliance has identified items in need of corrective action(s) for any deficiency associated with the *Valdivia* procedures/process where the compliance rate was determined to be less than 90%. The Office of Court Compliance will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies identified in this report. However, the Office of Court Compliance is always available to provide input and suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes. The corrective action plan for this tour is attached to this report, which already identifies the areas in need of corrective action. The divisions should insert their proposed/implemented corrective action and return to the Office of Court Compliance within 30 days.

## 2. Probable Cause Determination

The monitors reviewed 75 cases prior to the tour to measure the timeliness of the probable cause determination (PCD). Three revocation packets did not contain the CDCR 1502-B. (**Exhibit 1-B**). A timely probable cause determination was completed in all 72 reviewable cases (100%). (**Exhibit 1-A**). The RSTS "Closed Case Summary – Valdivia Timeliness Rules" report reveals 98% of PCDs for cases processed at CIW were timely for the month of January 2009.

A review of the revocation documents revealed that 32/72 (44%) 1502-Bs reviewed prior to the tour failed to meet the requirement to provide a short factual summary of the charged conduct for

each alleged charge. Although this is a 10% improvement from the statistics noted in the 2008 CIW self-monitoring report, DAPO provided statewide training to all parole agents in the second half of 2008, which provided instruction on the minimum standards for the factual summaries and clear direction was provided to agents regarding factual summaries. Unit Supervisors should not approve 1502-Bs that do not conform to the instruction provided by DAPO Headquarters. **(Exhibits 1-B and #2).** *See Section III below for more discussion regarding the factual content required on the 1502-B.*

❖ **CORRECTIVE ACTION PROPOSED**

- Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct. The OCC recommends that DAPO review any current policies and procedures that address what information must be included in the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met. It also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.

**3. Notice of Rights/Charges**

***Timeliness of Notice***

68/75 notices analyzed prior to the tour were timely. **(Exhibit 1-A).** The late cases averaged 1.6 days late. *Id.* Of the seven late cases, one case was four days late, one case was two days late and the remaining cases were each one day late. None of the late cases had a documented reason for the delay. Additionally, five notices were observed during the tour and all were timely. Therefore, 73/80 total notices were timely **(91%)**.

***Supervising Notice Agent Interview***

The Supervising Notice Agent (SNA) reported she reviews RSTS timeliness reports daily and conducts a regular monthly meeting with her staff to review relevant RSTS reports, Valdivia Alerts, and other sources of information that reveal compliance issues which require attention. She also conducts remedial training to address compliance issues. She indicated she reviews Plaintiff and self-monitoring reports with the Regional Administrator and will implement a corresponding corrective action plan, as needed.

A few issues identified from the pre-tour revocation packet review are summarized below, and were brought to the SNA's attention during the tour **(Exhibit #14)**:

- In five cases, Sections II and III of DEC were not completed correctly (Burey X05553; Jaunzemis X19276; Pena X25296; Peyton X27809; Reuber X17011).
- In three cases the Notice Agent failed to enter notice information into RSTS, but the hard copies of the notice documents were complete (Burney X05553; Pena X25296; Reuber X17011).

- In four cases the BPT 1100 was not signed by the parolee and in two of these cases the notice agent failed to sign the documents themselves (Beatty W94516; Cooks X15677; Nicherson X25728; Wyatt X07353).

Plaintiffs also noted similar issues in their December 18, 2008 CIW tour report, stating they reviewed several cases in which the notice was not documented in RSTS.

The monitors followed up with the SNA, who reported that a staff meeting was held immediately following this self-monitoring tour to address the issues noted above. The SNA also conducted related training to the Notice Agents to remedy these problems by instructing them on the proper methods for completing RSTS/DEC entries following a notice and the proper completion of notice paperwork. The OCC will conduct follow-up to ensure that the corrective action taken was sufficient to remedy these problems.

The SNA reported that Parole Agents sometimes fail to correctly note which jail the parolee is located at when they initiate a case in RSTS, which then impedes the Notice Agent's ability to conduct notices. There are several jails located in the area so incorrect location information requires that the notice agent expend valuable time tracking down the parolee's location (via contacting the individual jails or the Parole Agent directly to determine actual location). This additional work can cause a notice to be served late. Parole Agents must be mindful to put accurate information into RSTS to facilitate timely processing of cases at each step of the process.

#### ***Preparation and Method of Notice***

The Notice Agent prepared the cases for notice per current DAPO policy and procedures. She reported source documents are commonly included with the notice documents and did not report any issues when requesting missing documents from the parole unit or Case Records. The notices, conducted in the Notice Agent's office, were each conducted in a thorough and comprehensive manner. The agent conducted an interactive ADA review, asked questions regarding education, medical and mental health, medications, and other disabilities. Parolees were given an opportunity to self identify any need for accommodation and several parolees were provided a page magnifier as an accommodation during their notice. Each notice document was presented and explained to the parolee and the Notice Agent verified the parolee understood their rights and the revocation process. RSTS and DEC entries were completed in a timely manner following notice as required by the 9/11/07 *Armstrong* Court Order.

The monitors did not observe any compliance deficiencies in the content or presentation of the notice and related documents.

#### ***Adequate statement of facts on the CDCR 1502-B***

Minimum due process, as defined in *Morrissey*, requires the parolee be provided written notice of the claimed violation of parole and the *Valdivia* Permanent Injunction requires the parolee be given **“actual notice of the alleged parole violation, including a short factual summary of the charge conduct.”** The CDCR 1502-B is the document used to serve the parolee notice of the alleged violations and should therefore place them on alert to the conduct that is alleged to have constituted a violation of parole.

Officers from outside law enforcement agencies do not provide the details of most arrests prior to completion and submission of their arrest report. Therefore, the parole agent does not know the facts to support the alleged violations until the arresting officer generates the police report. CDCR maintains that stating the information provided by the arresting law enforcement agency, including the name of the arresting agency and charge(s) the parolee was reportedly arrested for, is sufficient until the final police report is made available to the parole agent.

In those instances where DAPO initiates the arrest, or the facts underlying the arrest are known to the parole agent, a short factual summary of the charged conduct, including a summary of the parolee behavior and/or evidence leading to the violation charge(s), should be included on the CDCR 1502-B (rather than a minimal recitation of the charges themselves). For example, if a parolee is arrested by law enforcement on a Parolee at Large (PAL) warrant, the parole agent should indicate on the 1502-B the facts that support the absconding charge. The short factual summary might read that the agent attempted a home visit and left a card with reporting instructions, but the parolee did not report, and contacted family members living at the parolees ROR who indicated that they have not seen the parolee for weeks. Such language provides a factual basis for the charge. It is insufficient if the parole agent simply indicates the parolee was arrested on a PAL warrant. The parolee behavior that gives rise to issuance of the PAL warrant is the critical component of the required factual summary. A short factual summary of the charged conduct is necessary to serve the parolee notice of the alleged violations and allow him/her to know the facts that supported placement of the parole hold and begin formulating a defense. This is required by the Permanent Injunction.

In 32/72 cases (44%) reviewed prior to the tour, the CDCR 1502-B failed to meet the Injunction's requirement to provide a *short factual summary of the charged conduct* for purposes of serving the parolee notice (via the 1502-B). (**Exhibits 1-B and #2**). This is an improvement from the previous self-monitoring tour (where 55% of 1502-Bs were deficient). However, DAPO conducted training for all parole agents in 2008, which covered this topic and provided instruction regarding minimum standards for factual summaries, so it appears that the corrective action taken by DAPO did not correct this deficiency. Deficient cases were from the following parole units:

Chula Vista 1- one case	San Bernardino 2- one case	Palm Springs- two cases
Moreno Valley 5- one case	Escondido 2- two cases	Orange 1- one case
Santa Ana- one case	Santa Ana 3- one case	San Francisco 4- one case
Ontario 2- two cases	Indio- one case	Golden West 1- one case
Chula Vista 3- two cases	El Cajon 3- one case	San Gabriel Valley 3- one case
Riverside 1- one case	Oceanside- one case	San Fernando Valley 3- one case
Rialto- two cases	Ontario 3- two cases	Moreno Valley 1- one case
Moreno Valley 3- one case	San Bernardino 4- one case	Chula Vista 1- one case
Victorville- one case	Orange 3- one case	

#### ***Charges Added After Notice***

There were 19/72 cases reviewed prior to the tour in which charges were added after the parolee was noticed. There were nine cases (47%) in which investigation revealed the parole agent had,

or should have had, information to support the additional charge(s) at the time the 1502-B was authored. In 10 cases, investigation revealed that the parole agent did not have knowledge of the charge(s) when writing the 1502-B, therefore justifying the additional charge(s) on the CDCR 1676 when written. The chart below is a summary of the cases where charges were known, or could have been known, at the time the 1502-B was completed:

<b>Parolee Name/CDC #</b>	<b>Parole Unit</b>	<b>Charges Added to Violation Report after Parolee Served Notice</b>	<b>Charges Known or Knowable</b>
Boggs X26233	Palm Springs	1. Changing residence w/o informing DAPO	Agent stated in the Violation Report he was notified by the parolee that she had been terminated from her treatment program on 12/10/08. Therefore, at that time the parole agent was aware the parolee had to change her residence (because she could no longer reside at the program), and that the parolee did not provide the agent a new address- before she was arrested on 12/28/08. At the time the parolee was arrested, the parole agent knew she had not provided a new address.
Hall W96793	Chula Vista 3	1. Failure to attend & complete Prop 36	AOR states in the Violation Report that BPH ordered the parolee to enroll and complete a Prop. 36 program on 11/25/08. Parolee failed to report to AOR upon release and therefore the agent knew he did not have proof of parolee's enrollment and completion of Prop 36.
Hussein X15276	San Bernardino 4	1. Failure to attend POC 2. Failure to test	Arrest date of 1/1/09. AOR stated in the Violation Report that on 12/12/08 the parolee missed her POC appointment (the parolee had called the LCSW but is specifically required to report all absences to the AOR directly- she did not). The agent was able to determine the appointment was missed before the arrest. Additionally, the AOR stated in the Violation Report that per his instructions, the parolee was to report on 12/16/08 for anti-narcotic testing and did not- this preceded the arrest and was known to the agent when the 1502-B written.
Mendoza X13031	Riverside 3	1. Failure to follow instructions. 2. Failure to participate in anti-narcotic testing.	The parolee absconded on 9/28/08 until her arrest on 11/30/08. AOR noted on the CDC 1676 several attempts to contact the parolee starting on 9/17/08, 10/9/08, 11/14/08, and 11/18/08 to contact the AOR and 9/22/08 the parolee was to report for

			anti-narcotic testing. All of this occurred prior to the arrest and the charges were therefore known.
Pinela W86412	Moreno Valley 3	1. Failure to follow instructions	AOR stated in the Violation Report the parolee signed SCOP in 2001 and 2003 to participate in a drug treatment program and was instructed on 7/1/08 to enroll and attend a substance abuse program following a positive drug test. No documentation that she had followed the instructions was ever provided to the agent prior to her arrest on 12/29/08.
Sanchez X18276	San Bernardino 1	1. Use of methamphetamine	AOR noted only 1 charge of use of methamphetamine on the CDCR 1502-B, Violation Reports indicated there were 2 different anti-narcotic test dates (10/17/08 & 11/4/08), each indicating a positive result for use of methamphetamine. Results were known prior to the 12/10/08 arrest and the drug charges should have been listed separately on the CDCR 1502-B.
Sapp X01988	San Bernardino 4	1. Failure to follow instructions: attend Prop 36.	Violation Report notes on 10/17/08 the parolee was instructed to enroll, participate, and complete a Prop. 36 program. On 11/19/08, AOR was notified via voice message the parolee was terminated from the program. The agent was aware that the parolee failed to follow instructions prior to the arrest.
Smith X20694	Orange 3	1. Failure to participate in Prop. 36 2. Illicit use of methamphetamine	AOR stated in the Violation Report on 9/11/08 parolee was referred to Prop. 36; on 11/19/08 AOR was contacted by the Program and told that due to several positive drug tests and failure to attend program appointments and meetings, the parolee had been terminated. The parolee was arrested the following day, 11/20/08, after the parolee had been notified of the facts to support the additional charges.
Valencia W56247	Ontario 2	1. Failure to follow instruction	Per the Violation Report, on 11/24/08 the AOR instructed the parolee to report to DAPO the day following her release. Parolee was release on 11/30/08 and failed to report as instructed, which the agent knew prior to the arrest.

❖ **CORRECTIVE ACTION PROPOSED:**

- Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with *actual notice of the alleged parole violation, including a short*



*factual summary of the charged conduct.* The OCC recommends that DAPO review any current policies and procedures that address what information must be included on the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met, if necessary. It is also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.

- Unit Supervisors must ensure that parole agents include all known or knowable charges on the 1502-B when it is written, as required by the recent DAPO training, which addressed this requirement and directs agents to include all known charges at the time the 1502-B is authored.
- The OCC will continue to monitor the issue of missing source documents and conduct investigation to determine the causes and report to the appropriate division the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in parole packets or forwarded to the parole units for inclusion in the field file.
- Although the SNA conducts remedial training, Notice Agents would benefit from a formalized training regarding proper documentation on the BPH 1073 and BPH 1100, as well as the proper procedure for making RSTS/DEC entries flowing a notice.

#### **4. Unit Supervisor Review of Violation Report**

A timely Unit Supervisor (US) review of the violation report was conducted in 73/75 revocation packets reviewed prior to the tour (97%). (**Exhibit 1-A**). The RSTS January 2009 “Closed Case Summary – Valdivia Timeliness Rules” report indicated a 99% compliance rate at this step for cases processed at CIW. (**Exhibit #3**).

Of the 14 cases reviewed prior to the tour that met the criteria for “Priority” designation, the parole agent or Unit Supervisor did not designate “Priority” on the first page of the CDC 1676, as required by DAPO policy, in 11 cases (79%). (**Exhibits 1-B and Exhibit #4**). A memorandum dated May 17, 2005, entitled “Processing of revocation Cases Related to Penal Code Sections 1192.7(c), 667.5, and 290,” sent to all DAPO staff, states that the agent of record shall review the available documents to determine if the case meets the priority criteria, which are specifically spelled out in the memorandum. The agent is then directed to stamp or write “PRIORITY” on the top of the first page of the report for any case meeting the priority criteria before submitting the report to the Unit Supervisor for review.

15/73 (20%) CDCR 1521-Bs reviewed prior to the tour included arrests and convictions noted together in a way that made it impossible to differentiate the two. This is problematic because it impedes the Par Ad and Deputy Commissioner’s ability to determine priority status or eligibility for remedial sanction programs. In 2008, DAPO provided training to all Parole Agents, directing

then to differentiate arrest from convictions on the 1521-B. This is a positive 14% improvement from the previous CIW self-monitoring tour but it is evident that parole agents have not consistently followed the direction provided by the training. Unit Supervisors should not approve Violations Reports that lump arrests and convictions together on the 1521-B. (**Exhibits 1-B and Exhibit #5**)

There were 28 cases reviewed prior to this tour in which the parolee was charged with violating a special condition of parole. The CDC 1515 was not included as supporting evidence (verifying existence of the special condition) in seven revocation packets (25%) (**Exhibit 1-B**). This is problematic because the last CIW self-monitoring report noted the deficiency at 15%. Unit Supervisors and Par Ads should not allow a case to proceed when supporting evidence is not included to support a charge.

❖ **CORRECTIVE ACTION PROPOSED:**

- Unit Supervisors and Parole Agents must familiarize themselves with DAPO/BPH memorandum “Processing of Revocation Cases Related to the Penal Code (PC) Sections 1192.7 (c), and 290” dated May 17, 2005, which outlines the procedures for identifying “Priority” cases on the Violation Report and in RSTS. It may benefit DAPO to reissue the policy to all staff as a reminder that it remains applicable.
- Unit Supervisors should not approve Violation Reports wherein arrests and convictions are not differentiated on the CDCR 1521-B.
- Unit Supervisors should not approve Violations Reports where the parolee is charged with violating a special condition of parole when the CDC 1515 is not attached as supporting evidence.

## **5. Parole Administrator Review**

Four cases reviewed prior to the tour were extradition and a Parole Administrator (Par Ad) review was not required. A timely review occurred in 51/71 (72%) total cases. (**Exhibit 1-C**). The twenty late cases averaged 1.8 days late. *Id.* One case was nine days late because the packet was lost in routing from the parole office. Twelve cases were identified on the RSTS Case Status Report as being received late from the parole office, which thereby caused the Par Ad review to be late. It is extremely important that parole units compile complete revocation packets and send them to the correct DRU within timelines.

### ***Parole Administrator Interview***

The Parole Administrator interviewed is one of three who rotate between CIW and CIM on a daily basis. She reported no issues concerning her ability to process cases that arrive timely at the DRU. However, because a Par Ad is only scheduled to work at CIW in the mornings, if a case arrives in the afternoon and is nearing expiration of *Valdivia* timelines at the Par Ad or RTCA steps, the case is not processed until the next day. Her observation is supported by the pre-tour timeliness review at the Par Ad step, at which 10/20 late cases were received at the DRU on the no-later-date (for the Par Ad review) but not reviewed until the next day. To solve this problem, the BPH agreed to utilize their scanners at CIW and CIM to send a packet requiring expeditious review to the Par Ad (when the Par Ad has left for the day to go to CIM), which will

enable the Par Ads to review cases timely when they are not physically present at CIW. This joint effort between BPH and DAPO will assist should eliminate a number of cases that are processed late at the Par Ad review step.

#### ***Review of the revocation documents***

A review of the revocation packets analyzed prior to the tour revealed the following compliance deficiency:

- Of the 14 cases that met the criteria for “Priority” designation, the Parole Administrator did not create a “Priority” designation in RSTS, as required by DAPO policy, in two cases. A memorandum dated May 17, 2005, entitled “Processing of revocation Cases Related to Penal Code Sections 1192.7(c), 667.5, and 290,” sent to all DAPO staff, requires that the Par Ad review cases for priority designation as a safeguard to the possibility that critical factors might have been overlooked by field units and ensure they are appropriately labeled (**Exhibits 1-B and #6**).

### **6. Return to Custody Assessment**

64/75 return to custody assessments (RTCA) analyzed prior to the tour were timely (**85%**). (**Exhibit 1-A**). The eleven late cases averaged 1.8 days late. *Id.* However, eight of the late cases cannot be attributed to BPH because they were received late from the parole units, the revocation packet was initially sent to the wrong location, or the case was not provided to the BPH by the Parole Administrator until after the RTCA timeline had expired. For example, RSTS indicates that the revocation packet for parolee Leos (X19120) was initially sent from the parole unit to Case Records instead of the DRU. The DRU did not physically receive the packet until 12/03/08, the date on which the RTCA timeline expired. The RTCA was not completed until the following day, after the Parole Administrator had a chance to review the case. The revocation packet for parolee Tilley (X01028) was received timely at the DRU, but the Parole Administrator did not complete a review for six more calendar days, which caused the RTCA to be late.

DRU staff reported that revocation packets continue to be sent to the wrong location (i.e. CIW cases are sent to nearby CIM or to Case Records South) and that a number of revocation packets simply arrive late from the parole units. Cases reviewed during this tour support the statements made by DRU staff. DAPO previously sent a *Valdivia* Alert to all staff reminding them to send revocation packets to the correct DRU, but the problem nonetheless persisted during this tour.

All staff reported that, once the revocation packet is received, there are no issues associated with completing the RTCA itself. The Deputy Commissioners documented their consideration of remedial sanctions on the BPH 1104-RTCA in every case at this step. The RSTS documents did not yield any additional compliance deficiencies related to the RTCA.

Plaintiffs’ counsel, in their last monitoring report for CIW, questioned the language utilized by the DCs regarding ICDTP referrals at the RTCA step because it appeared somewhat confusing. For example, plaintiffs noted that one screening offer contained the following language: “Reasons Remedial Sanctions not Chosen: Other Reason: Possible ICDTP referral.” Defendants were forced to utilize such language in order to keep the case open in RSTS because, if a DC wanted to *recommend* ICDTP at the RTCA step and chose the ICDTP from the drop-down list of

options, RSTS would close the case out, believing that ICDTP had been *imposed*. As a stopgap measure, the DCs were forced to indicate that a remedial sanction was not chosen, in order to keep the case open, and make a note that ICDTP was being recommended or should be considered at the PCH. The DCs were all aware of the RSTS glitch and knew how to interpret remedial sanction recommendations made by other DCs at the RTCA step. RSTS has since been modified to solve this problem.

❖ **CORRECTIVE ACTION PROPOSED:**

- **Parole units must send revocation packets to the DRU within the mandated timeframes and ensure that they are sent to the correct DRU location. The inability to provide the DRU packets in a timely manner causes the Par Ad review and RTCA to be late, and can lead to late probable cause and revocation hearings.**

## **7. Appointment of Counsel**

### ***Timely Appointment of Counsel***

DRU staff utilized the revocation packet tracking feature within RSTS to document when the case was made available to CalPAP in 68/75 cases reviewed prior to the tour. Counsel was appointed timely in 61/68 cases (90%). According to data collected by CalPAP, timeliness statistics at this step over the past several months are as follows (note, cases assigned to the Chino CalPAP office encompass CIW, CIM, and several county jails):

Month	Cases Reviewed	Cases in Compliance	% Cases in Compliance
August 08	1,498	1,456	97.20%
September 08	1,535	1,459	95.05%
October 08	1,599	1,491	93.25%
November 08	1,147	1,119	97.56%
December 08	1,571	1,474	93.83%

This data supports the argument that cases processed at CIW are consistently assigned counsel in a timely manner.

## **8. Effective Communication and Effective Communication with Appointed Counsel**

### ***Missing BPT 1073s and/or Source Documents***

The BPH 1073 was included in all 75 revocation packets reviewed prior to the tour. Forty 1073s identified a disability and referenced a verifying source document in Section I. Of those, the source document was included in 19 packets (48%). According to CalPAP's December 2008 "Cases Missing 1073 & Source Documents Monthly Report," 99% of cases assigned to the Chino office included the 1073 in the attorney's copy (**Exhibit #7**). Of the 543 assigned cases that required an identifying source document related to a disability, 447 packets contained the necessary source document (82%). *Id.*

### ***Disabilities and Effective Communication System (DEC)***

*DAPO* - The DRUNA used DEC as required by current DAPO policy and procedures. BPH 1073 information is entered into DEC from the paper 1073 within the required 24 hours after the notices are completed. No issues or concerns were reported with the use of DEC.

*BPH*- The DC reviewed DEC prior to every hearing observed during the tour and also updated DEC at the conclusion of every hearing to document what accommodations were provided to facilitate effective communication. The DC utilized the information contained in DEC during his interactive ADA reviews. He did not report any issues associated with the use of DEC.

### ***Sign Language Interpreters***

*DAPO* - CIW has a designated sign language interpreter assigned to the institution and the DRUNA has the contact information available should the need arise during a notice. A sign language interpreter was not required or requested during the monitoring tour.

*BPH*- There is a sign language interpreter who works full time between the California Institution for Men, CIW, and the California Rehabilitation Center. The interpreter is available with 48-hours notice and the DRU's Office Services Manager reported that the BPH had not yet had any difficulty securing his services for hearings or attorney consultations.

### ***Foreign Language/CyraCom/Language People***

*DAPO* – The SNA reported her agents still use the CyraCom system; however, they will be receiving the equipment from the new provider, International Language Interpreters soon. Neither IRC or the Theo Lacy jails in Orange County can accommodate the CyraCom system and Notice Agent must use a live interpreter when a parolee requires or requests the use of an interpreter as an accommodation. The SNA reports service is unsatisfactory with the contracted company; there have been issues with approving the interpreter's background check, potentially delaying the notice. Additionally, she has been advised that, at times, it can take up to two weeks to schedule an interpreter.

*BPH*- A Language People telephone, used for foreign language translation during probable cause hearings, was present in the hearing room. There were no hearings which required translation services. BPH staff did not report any present issues concerning the telephones or services provided by The Language People.

### ***ADA Accommodations Available***

*DAPO* - The DRUNA had the required ADA equipment available during the observed notices. Several parolees' self identified they needed help to see on the BPH 1073; the DRUNA provided the magnifier as an accommodation and noted the information in the appropriate sections.

*BPH*- A wheelchair and magnifier were both present in the hearing room. In addition, a hearing amplifier is available in the DRU. Several parolees had disabilities that required accommodation during observed hearings. For example, parolee Kaufman (W87961) is CCCMS and has a somewhat low TABE score (5.0). The DC asked the parolee to read the ADA paragraph contained on the BPH 1073 and explain her understanding of the statement in order to gauge her reading ability and level of understanding. The information concerning parolee Smith's (X16533) TABE score was conflicting- the BPH 1073 reported a score of 5.9 while DEC

indicated a score of 3.9. The DC and attorney spent some time asking questions of the parolee and verified that she cannot read well, and the DC appointed counsel as an accommodation.

#### ***Section IV of BPT 1073***

In 8/75 cases (11%), DRU staff did not complete Section IV of the BPH 1073 in DEC as required by BPH policy and procedure. (**Exhibits 1-B and #8**). Section IV is designed to indicate what accommodation(s) the parolee will need during the revocation process (specifically the probable cause and revocation hearings) and to ensure that the accommodation is made available in advance of the hearing.

#### **❖ CORRECTIVE ACTION PROPOSED:**

- **The OCC will continue to monitor the issue of missing source documents and conduct an investigation to determine the causes and report to the appropriate divisions the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in the parole revocation packets.**
- **BPH supervisors must ensure that DRU staff complete Section IV of the BPH 1073 in DEC in order to identify accommodations that must be provided during the PCH or revocation hearing.**
- **DAPO Headquarters should review its contracts with interpretive services used at IRC and the Theo Lacy jails and require that the providers abide by the contract or consider changing providers to one that can schedule interpretive services in a timely manner.**
- **DRU staff must be instructed and required to complete Section IV of the BPH 1073 in DEC.**

### **9. Probable Cause Hearing**

#### ***Timeliness***

72/75 PCHs analyzed prior to the tour were timely (96%). (**Exhibit 1-A**). Two of the late hearings were one day late and one was seven days late (Cruz, W76123). *Id.* The revocation packet for parolee Cruz was somehow lost in transit and not received at the DRU until 27 calendar days (17 business days) after the parole hold was placed. Furthermore, the revocation packet was missing several documents, including the notice documents, the BPH PAL action, and a copy of the special conditions of parole. Those missing documents were sent to the DRU on the same day and also provided to CalPAP. (**Exhibit #9**). The parolee accepted ICDTP at her PCH, which was held seven days late, and the BPH 1103-PCH does not indicate that any timeliness objections were made by defense counsel.

CalPAP's monthly reports show that of the PCHs held in Chino (for both CIW and CIM), 97.75% in August 2008, 98.42% in September 2008, 95.51% In October 2008, 98.74% in November 2008, and 97.92% in December 2008 were timely. This is evidence of CIW's continued compliance with the PCH timeframe.

### ***Observed Hearings***

The monitors observed one DC conduct all six PCHs. The DC proved exemplary in his knowledge of the Injunction and applicable BPH policies and procedures related to revocation. The DC conducted a thorough ADA review at the inception of each hearing (including a review of DEC, the BPH 1073, and an interactive ADA review with the parolee herself), explained the purpose of the hearing, clearly reviewed all charges and supporting evidence, allowed the parolee/defense counsel to present evidence in defense/mitigation to the charges, and clearly announced his probable cause findings after all evidence was considered. The monitors did not note a single deficiency during observations.

Parolee Mosqueda (X10452) was charged with failure to follow instructions, possession of drug paraphernalia, use of heroin, and use of cocaine. She did not dispute probable cause. The DC granted the parolee's request for ICDTP because all charges were specifically related to her drug use, but cautioned that she has had multiple chances to address her drug treatment through rehabilitation programs (at least seven prior drug treatment programs) and has not yet taken recovery seriously.

Parolee Mack (X24094) was charged with criminal threats. She is CCCMS and reported she is receiving her medications at CIW. The parolee did not contest probable cause but offered some mitigation by reporting that her dosage of nightly medication was reduced while she was in the community, which adversely affected her ability to sleep and concentrate. She also reported some personality changes as a result of the medication adjustment, which she believes contributed to her mindset at the time she made the criminal threats. The DC determined that a return to custody was warranted in this case and the parolee accepted an 8E return to custody with the added special condition that she completes an anger management class upon her release.

Parolee Smith (X16533), who has a low TABE score and reported she cannot read, was charged with changing residence without informing DAPO, failing to inform DAPO of a criminal arrest, possession of drug paraphernalia, and resisting arrest. She had her own glasses when she arrived at the hearing but was appointed counsel as an accommodation to help her read the documents. The DC found good cause on all charges based on the evidence presented. He determined that remedial sanctions were inappropriate at this time given the parolee's inability to remain free of criminal activity once released from custody, which poses a threat to public safety. The parolee accepted a 6E return to custody.

Parolee Morin (W80520) is classified CCCMS but reported she has not taken medications in over two years. She was charged with use of alcohol, drunk in public, and disturbing the peace. The DC noted that the parolee has an extensive parole violation history for use of alcohol and that her current arrest occurred one day after she was last released from custody. Due to her extensive criminal history, poor performance on parole, and multiple prior remedial sanction placements, the DC determined a return to custody was appropriate and the parolee accepted 7E.

Parolee West (X16698) had her own glasses when she arrived at the hearing. Her BPH 1073 notes that she needs a cane but she reported that was only temporary due to a sprained ankle. She reported she no longer needs, and declined use of, a cane for the hearing. She was charged with absconding and did not dispute probable cause. The DC noted that the parolee's CDC 1244

was outdated and had to look at her revocation history in RSTS. The DC was considering ICDTP as disposition but the parolee admitted she had local warrants that would prevent her from participating. The DC found the parolee inappropriate for Proposition 36 given her chronic history of absconding and unwillingness to show up where she needs to in order to successfully complete parole. The parolee accepted a 9E return to custody.

Parole Kaufman (W87961) was charged with absconding, use of methamphetamine, and association with a prohibited person. The parolee is CCCMS and reported she is receiving her medications at CIW. DEC also revealed a low TAFE score so the DC had the parolee read the ADA paragraph contained on the BPH 1073 out loud and explain back what was read. The parolee read and understood well and reported she simply did not try when she took the test that determines the TAFE score.

The RSTS documents for the cases observed did not yield any compliance deficiencies or issues. The DC completed the forms thoroughly, documenting the reasons for his decisions with respect to probable cause and remedial sanctions.

***Evidentiary Basis for Probable Cause Finding Documented by Deputy Commissioner***

The DCs did not adequately document the evidentiary basis for their probable cause finding in 25/75 (33%) of the cases reviewed prior to the tour. **(Exhibits 1-B and #10)**. However, the DC observed during the tour did an exceptional job documenting the evidentiary basis for his probable cause findings. For example, parolee Kaufman (W87961) was charged with absconding, use of methamphetamine and associating with a prohibited person. The DC wrote the following as the basis for his probable cause finding: “Charge 1: On 1/20/09, AOR submitted miscellaneous request after receiving information from parolee’s father that [parolee] was no longer at residence of record], had spent the night with a prohibited person and threatened suicide before her departure. [Parolee’s] whereabouts unknown and BPH acted to suspend parole effective 1/20/09. Charge 2: [Parolee] submitted anti-narcotic test that returned positive for methamphetamines. Charge 3: On 12/01/08 [parolee] signed special conditions of parole that prohibited her from contacting David K. [Parolee] and David K. admitted they spent the night together at a local motel on 1/19/09.” This summary is an excellent example of compliant documentation for a probable cause finding and clearly articulates the actual evidence the DC relied on in making his decision, rather than simply citing the source of the evidence or the ultimate conclusion that probable cause was found. Anyone can look at the RSTS paperwork for this case and easily determine what evidence supported the DC’s probable cause finding.

**❖ CORRECTIVE ACTION PROPOSED:**

- Associate Chief Deputy Commissioners must ensure the DCs are documenting the actual evidence relied upon in making a finding of probable cause. Merely citing the source of the evidence alone does not comply with the requirements of minimum due process. BPH would also benefit from including this subject in the next training for deputy commissioners.



## 10. Revocation Hearing

No revocation hearings were scheduled to occur during the tour. The monitors reviewed three cases prior to the tour that proceeded to a revocation hearing and Exhibit 1-A shows that all three (100%) were timely. CalPAP's monthly reports show that of the revocation hearings held in Chino (for both CIW and CIM), 95.30% in August 2008, 94.12% in September 2008, 96.90% in October 2008, 98.21% in November 2008, and 98.21% in December 2008 were timely.

The monitors reviewed tapes for three revocation hearings that occurred at CIW in December 2008 and January 2009.

1. Turner (X16158)- The parolee was charged with absconding, petty theft with a prior, resisting arrest, false identification to a police officer, and use of alcohol. Prior to the hearing the parole agent and attorney had a discussion and agreed that a return to custody of 5E would be a sufficient offer to dispose of the case without the need for a hearing. The parolee was agreeable to a 5E return to custody. The parties informed the DC, who was also agreeable to the recommended disposition. The parties convened on the record, a thorough ADA review was conducted, the DC verified that the parolee had received all documents, the parties reviewed the PCH documents, and the DC vocalized her good cause findings (including the evidentiary basis for her findings) based on the documentary evidence produced by the state and the parolee's unconditional waiver. The DC dismissed the false identification charge because the parole agent verified that the name she provided police was her maiden name, which she still uses from time to time. The parolee received a quite reasonable offer given the number and nature of the charges.
2. Price (X14867)- The parolee was charged with absconding and failure to follow instructions. The DC conducted a thorough ADA review at the outset of the hearing, noting that the parolee was previously classified CCCMS. The parolee stated she is no longer CCCMS. The parolee is also pregnant. The Agent of Record was not present (a substitute agent was there) and defense counsel stated on the record that there was no objection to the substitute agent because the parolee was admitting the charges. The DC accepted the admissions but dismissed the charge of failing to follow instructions because the behavior was reflected in the absconding charge. The parolee's admission served as the basis for the DC's good cause finding, which the DC verbally announced on the record. The case then moved into the disposition phase and the parties reviewed the parolee's commitment offense, violation history, performance on parole, and DAPO's recommendation. The parolee was also allowed to present mitigating evidence and evidence of positive parole adjustment. She was assessed a 7E return to custody.
3. Halsey (X14662)- The parolee was charged with absconding and failing to participate in the Parolee Outpatient Clinic. The ADA review confirmed the parolee's EOP status and revealed that the parolee needs help reading and understanding procedures and forms. The DC appointed counsel as an accommodation and verified that the parolee understood the contents of the Violation Report prior to the hearing. DAPO had initially subpoenaed the arresting officer but all parties agreed he was unnecessary because the charges were technical violations of parole. The officer was allowed to leave without providing

testimony. Based on the testimony provided by the parole agent that the parolee left her residence of record and could not be found, and that she did not show up for two mandated POC appointments, good cause was found on both charges. The DC announced her probable cause finding, as well as the evidence that supported her decision, on the record. The parolee was given ICDTP because she acknowledged she absconded because she would have tested positive for drugs use if she reported to the parole unit.

A review of the revocation hearing tapes did not yield any compliance deficiencies. The DCs documented the evidentiary basis for their good cause findings in RSTS.

## **11. Remedial Sanctions**

The ICDTP continues to be the most frequently utilized remedial sanction at CIW, along with placements in Proposition 36 drug treatment programs. According to RSTS, the BPH placed 25 parolees in the ICDTP in November 2008, 30 in December 2008, and 36 in January 2009. **(Exhibit #11)**. Similarly, placements in Proposition 36 treatment programs numbered 53 in November 2008, 48 in December 2008, and 57 in January 2009. *Id.* The revocation packets reviewed prior to and during the tour also indicate a large number of cases in which DAPO staff recommended the parolee for the ICDTP. The RSTS reports and review of the revocation documents provide evidence that Unit Supervisors, Parole Administrators and Deputy Commissioners are considering parolees for remedial sanctions at various steps in the revocation process. Deputy Commissioners continue to document their consideration, as well as reasons for denial, in RSTS.

Despite the continued consideration of remedial sanctions throughout the process, BPH staff voiced a continuing problem associated with the ICDTP. According to DRU staff, parolees who accept ICDTP while housed at Los Angeles county jails are often transferred to CIW before they are picked up at the jail for transport to the ICDTP. The parolee subsequently arrives at CIW but revocation packet is delivered to Case Records South instead of the CIW Case Records office (because the parolee is at CIW the CIW Records office is tasked with processing the case for release and therefore requires the revocation packet). As a result, DRU or CIW Case Records staff must track the packet down from Case Records South before they can process the case for release from CIW, which naturally leads to delays in the parolee's transport to the ICDTP. On a positive note, BPH's Office Services Manager I has requested that the Los Angeles DRU send all female ICDTP packets to CIW in order to have the packets available if the parolee is transferred from the county jail to CIW before the ICDTP transport occurs.

DRU staff also reported there are a number of cases in which, after the parolee accepts the ICDTP, Case Records staff identifies a local warrant (or some other obstacle) that prevents the parolee's release from custody and prohibits participation in the ICDTP. Although it would be beneficial to know warrant status prior to accepting ICDTP at a hearing, the DRU staff also reported that Case Records staff has done an excellent job expeditiously notifying the BPH when a warrant (or other factor) will prevent placement. In many instances Case Records staff generates a Miscellaneous Decision for the BPH and has the BPH place the parolee back on

calendar for a rehearing. Cases of program rejects and the need for rehearing would decrease in number if there was some system in place to conduct a warrant check before the hearing.

❖ **CORRECTIVE ACTION PROPOSED:**

- **A process must be developed to ensure that, when a parolee is transferred to another CDCR facility prior to being picked up for transport to the ICDTP, their file is forwarded to the receiving institution so the case can be tracked and transport to the ICDTP from the receiving institution scheduled.**
- **A system must be put into place to identify local warrants and other obstacles that prevent placement in the ICDTP, before the parolee is offered and accepts the program at a probable cause or revocation hearing. When placement is rescinded after it was initially ordered, the parolee must return to the BPH for another hearing.**

## **12. Mentally Ill Parolees**

It appears that the interim process for suspending and tracking cases in which the parolee appears unable to meaningfully participate in the revocation process due to mental illness is working as intended. CalPAP produces logs on a regular basis that show all parolees tracked under the interim process and includes notes concerning their mental health status. Once a parolee is able to resume the revocation process, DRU staff is notified and placed on the next available calendar (which requires that hearings for this population be scheduled every two weeks). It appears that CalPAP attorneys are conducting regular status checks to determine their client's status and the hearings are occurring once the parolee has stabilized and can participate.

According to CalPAP's February 13, 2009 GAP Parolee log, there are currently two cases out of CIW that were suspended due to the parolee's mental illness. Parolee Pottorff's (X25803) proceedings were suspended in November 2008. CalPAP's log indicates that regular status checks occurred that the parolee was able to resume the revocation process as of January 30, 2009. Her probable cause hearing occurred on February 4, 2009 where she accepted a 10I return to custody. Parolee Molnar's (V59805) proceedings were suspended in October 2008. She was eventually able to participate in her probable cause hearing on December 16, 2008, where she rejected a 9I return to custody. The parolee attempted to secure private counsel for the revocation hearing, which was postponed to enable her to hire counsel. As of February 12, 2009 the parolee did not retain private counsel and requested that her revocation hearing go forward with her assigned CalPAP attorney.

## **13. Staffing Levels**

*DAPO:* The Supervising Notice Agent reported she currently has three vacancies; a PAI, a PAII and an Office Assistant. She did not indicate these vacancies impacted her staff's ability in meeting the Valdivia time frames. There is no time frame for filling the vacant position.

*BPH:* The OSM I reported that the DRU only has one current vacancy in the Program Technician III classification. DCs are shared between Regions III and IV and the ACDC did not report and current need for additional DC staffing at CIW.

#### **14. Revocation Extension**

The monitors interviewed the Classification & Parole Representative staff (C&PR) at CIW regarding the revocation extension process. Staff understood the *Valdivia* process but expressed a need for additional training for all staff involved in the revocation Extension process.

At CIW, the Assistant C&PR receives the CDC 804 and a copy of the CDC115 from Case Records, reviews the central file, checks DEC, completes Section I of the BPH 1073, and then gives the packet to the C&PR for review and initiation in RSTS. The C&PR then returns the packet to the assistant C&PR, who completes the notice. The Assistant C&PR verified that he does not make entries in the NOR section of RSTS because they do not have authorization to access this section (only the C&PRs and CCIIs have that level of RSTS access in the NOR section across the state). As noted below, this problem has since been solved.

The Office of Court Compliance reviewed the closed Revocation Extension cases at CIW between December 1, 2008 and January 31, 2009. The following is a summary of the three cases processed (**Exhibit #12**).

##### **Timeliness of receipt of CDC 804 and CDC 115**

All three cases were processed late at this step. Two of the cases were six days late and the third case was three days late. Failure to submit the CDC 804 and a copy of the CDC 115 to the Case Records office within twenty four hours continues to be an ongoing problem statewide.

##### **Timeliness of the C&PR Review**

Two of the three cases were processed the same day the 804 was received while the third case was processed one business day after being received. This shows the professionalism and dedication the C&PR puts into meeting the *Valdivia* Injunction once she receives a case for processing.

##### **Timeliness of Notice of Rights**

Not only were all three cases processed timely at this step, the NOR was served and returned the same day they were received from the C&PR, again showing there dedication to meeting the requirements of the *Valdivia* Injunction.

RSTS allows the C&PR or CCI to enter into RSTS relevant NOR information, including the date on which the notice was successful; however, at CIW the notice is done by the CCII. During the tour it was discovered that the CCIIs do not have the level of RSTS access that allows them to enter notice information into RSTS after a notice is completed. Therefore, there is no way to determine when the notice actually occurred because the information was not being entered. The CCII further indicated that they have never received any formal training on RSTS.

As a follow up to this issue the monitor contacted CIW and Case Records representatives at CDCR Headquarters to report the problem and has since been advised that the CCIIs now have

the necessary access to the NOR section of RSTS and will immediately start making RSTS entries following completion of a notice.

**Timeliness of Revocation Extension packets referred to the BPH**

All three cases were processed timely at this step.

**Timeliness of attorney appointment**

RSTS indicates that all three cases processed at this step were timely.

**Timeliness of attorney consultation**

There were three cases processed at this step. RSTS indicates that two cases were late; however, in both cases there are no dates entered into RSTS to confirm when the attorney consultation occurred, so it is unclear how RSTS calculated the case to be late. The PCH for one of the late cases was conducted on the eleventh business day following discover, so it is impossible that it was late at this step, (Garcia, W83712) (**Exhibit #13**). The OCC will work with the RSTS team and look into the gaps in data collection for some kind of resolution (in order to determine whether CDCR staff is not entering the necessary tracking information into RSTS or whether RSTS itself requires modification in order to accurately report timeliness).

**Timeliness of Probable Cause Hearing**

All three cases were timely at this step.

**Timeliness of Revocation Extension Hearing**

All three cases were resolved at the PCH level.

**❖ CORRECTIVE ACTION PROPOSED:**

- **Custody staff must be required to send a completed 805 and rough draft 115 to Case Records within 24-hours of the discovery date, as required by the Revocation Extension policies and procedures.**